

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

CALVIN DOUGLAS DYESS,

Petitioner,

v.

Civil Action No: 2:12-03624

Criminal Action No: 2:99-00012-01

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Before the court are petitioner's objections to Magistrate Judge Tinsley's Proposed Findings and Recommendation. (Doc. No. 1324). On June 19, 2015, Magistrate Judge Tinsley filed his Proposed Findings and Recommendation ("PF&R"), (Doc. No. 1313), and recommended that the court dismiss petitioner's motion to vacate, set aside or correct a sentence as a successive § 2255 motion. In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Tinsley's Findings and Recommendation. Petitioner moved the court for an extension of time to file objections to the PF&R. (Doc. No. 1316). The court granted this motion in part and allowed petitioner four additional weeks to file his objections, extending the due date from July 9, 2015 to August 7, 2015. (Doc. No. 1317).

On August 18, 2015, the court adopted the findings and recommendations contained in Magistrate Judge Tinsley's PF&R as petitioner failed to file any objections in the prescribed period. (Doc. No. 1319). On August 25, 2015, the court received petitioner's objections to the PF&R. (Doc. No. 1321). While petitioner did not certify the date on which he gave these objections to prison officials for mailing, he did sign a certification stating that the objections "were served" on August 5, 2015, two days before the deadline for objections. (Doc. No. 1321 at 12). Accordingly, the court considered the objections as having been timely filed pursuant to the prison mailbox rule. See Houston v. Lack, 487 U.S. 266, 270 (1988). After reviewing petitioner's arguments and exhibits, the court overruled his objections and adopted the Magistrate Judge's PF&R. (Doc. No. 1323).

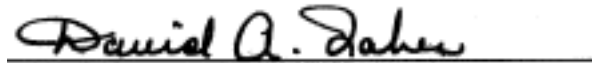
On September 16, 2015, the court received a second filing of objections from petitioner. (Doc. No. 1324). In this filing, petitioner objected to the court's prior memorandum opinion and order, (Doc. No. 1319), that found that petitioner failed to file his objections in a timely fashion. Additionally, petitioner repeated his arguments against adoption of the PF&R from his original objections. The court addressed these arguments, as well as the timeliness of his objections, in

its memorandum opinion and order dated August 28, 2015. (Doc. No. 1323).

Consequently, the court **OVERRULES as moot** petitioner's objections to the PF&R. (Doc. No. 1324). The Clerk is directed to forward a copy of this Memorandum Opinion and Order to petitioner, pro se.

It is SO ORDERED this 13th day of July, 2016.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge